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Supreme Court, U.S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1970

No. 1404

TENNESSEE CORPORATION,
a Delaware corporation,

Petitioner,

vs.

SEABOARD COAST LINE RAILROAD COMPANY,
a Virginia corporation,

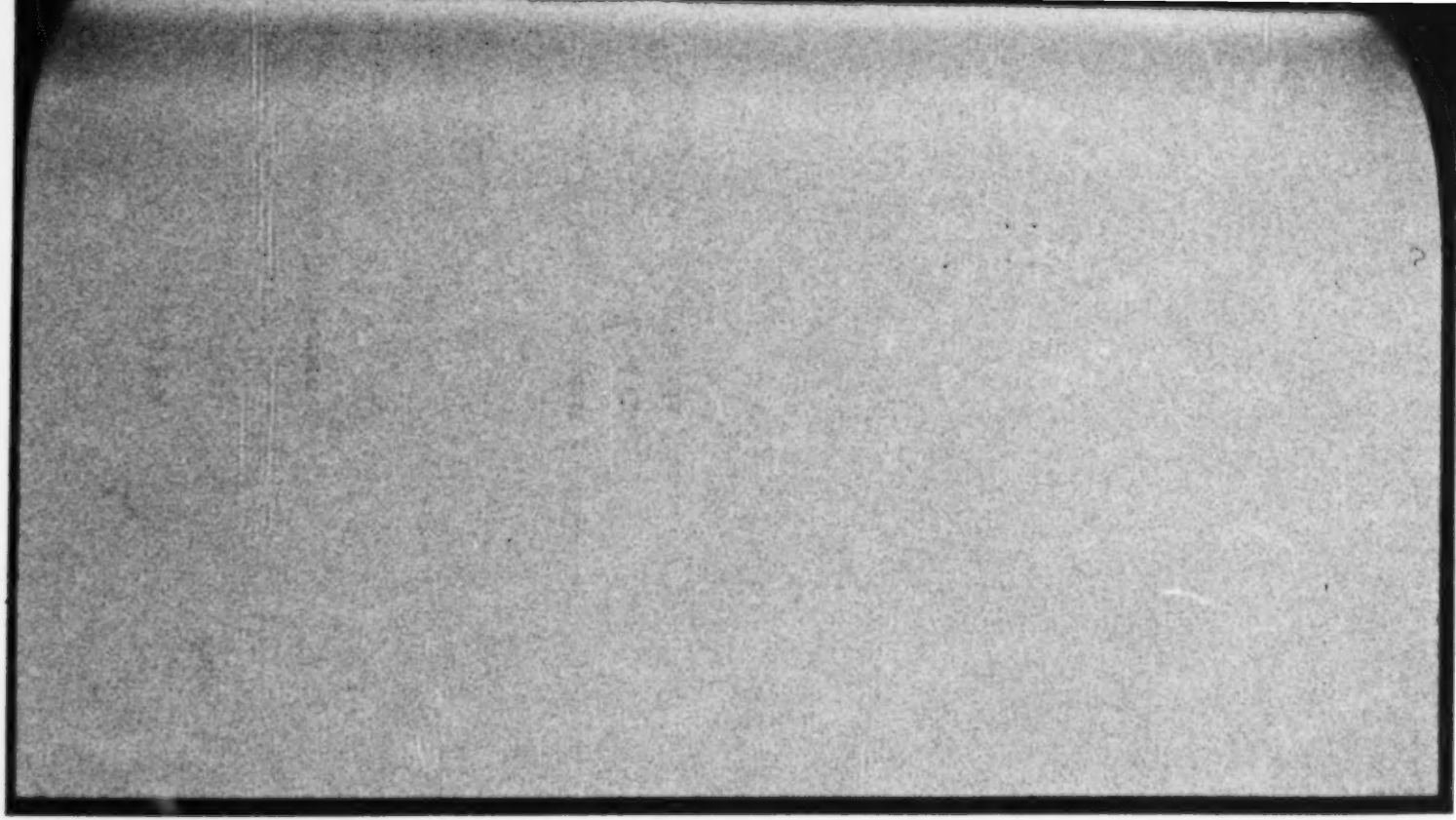
Respondent.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

FRANK G. KURKA
General Solicitor
Seaboard Coast Line Railroad Company
500 Water Street
Jacksonville, Florida 32202

Attorney for Respondent

FREE PRESS PUB. CO., INC., TAMPA, FLORIDA



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QUESTION PRESENTED FOR REVIEW

WHETHER THE COURT OF APPEALS, FIFTH CIRCUIT, HAS DECIDED AN IMPORTANT STATE QUESTION IN A WAY IN CONFLICT WITH APPLICABLE STATE LAW.

ARGUMENT

This is a diversity action, and the law of the State of Florida is binding and controlling. The decision of the Court of Appeals, Fifth Circuit, so acknowledges.

Petitioner contends that the only way the Respondent may prevail is for the Sidetrack Agreement and the Easement Agreement to each say in so many words that the Industry will indemnify the Railroad for the Railroad's own negligence, citing *Gulf Oil Corporation v. Atlantic Coast Line R. Co.*, 196 So.2d 456 (2d Fla. App. 1967).

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This position of the Petitioner fails to consider the clear intention of the parties. A reading of the entire Agreement shows that the Railroad was not willing to permit the Industry to use its own power at the same time that the Railroad was using its power without requiring the Industry to assume absolute liability in the event of an accident. Having specifically referred to its own negligence in paragraphs 6(c) and 6(e), the phrase "and howsoever caused" appearing in paragraph 6(g) then takes on the full meaning which the parties intended. The decision states that this language caused the Agreement to have the specificity required by the Florida courts.

CONCLUSION

The decision of the Court of Appeals, Fifth Circuit, is in accord with the applicable Florida law, and there is no conflict between this decision and the decision in *Gulf Oil*.

The Petition For A Writ of Certiorari should be denied.

Respectfully submitted,

FRANK G. KURKA
General Solicitor
Seaboard Coast Line Railroad Company
500 Water Street
Jacksonville, Florida 32202
Attorney for Respondent

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PROOF OF SERVICE

I, Frank G. Kurka, attorney for the Respondent, Seaboard Coast Line Railroad Company, and a member of the Bar of the Supreme Court of the United States, certify that on the _____ day of May, 1970, I served the foregoing Brief in Opposition (together with the Appendix attached) on the Petitioner, being the only party required to be served, by depositing two copies in the United States Mail, first class, postage prepaid, addressed to Charles W. Pittman, of Macfarlane, Ferguson, Allison & Kelly, P. O. Box 1531, Tampa, Florida 33601.

FRANK G. KURKA
General Solicitor
Seaboard Coast Line Railroad Company
500 Water Street
Jacksonville, Florida 32202

Attorney for Respondent